IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

Writ Petition No.29508 of 1997

DATED 9-3-2007

BETWEEN

Ch.Mallaiah

.. Petitioner

And

The Giijan Cooperative Corporation Limited,
Visakhapatnam, represented by
Vice-Chairman & Managing Director.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.29508 OF 1997

ORDER

The petitioner questions the order of respondents 1 and 2 in imposing on him the punishment of removal from service and dismissal of his appeal as arbitrary and illegal.

The facts in brief are that the petitioner was appointed as a Salesman in the respondent Corporation in 1971. Thereafter, he was promoted as a LDC-cum-Godown Clerk vide proceedings dated 8.12.1975. He was put in charge of domestic requirements from 8.12.1975 to 30.9.1977 at Asifabad and was working under the control of the Manager of the Branch Sri J.Ravi Mohan Reddy. The petitioner was issued a charge memo for various irregularities. An enquiry was held and, thereafter, the 2nd respondent imposed on the

petitioner the punishment of removal from service. Aggrieved by the order of the disciplinary authority removing him from service, the petitioner preferred an appeal on 20.2.1985 and the appellate authority by order dated 11.9.1997 dismissed the appeal.

According to the petitioner, the respondents had invoked the jurisdiction of the Arbitrator under the A.P.Cooperative Societies Act and the Cooperative Sub-Registrar, in ARC 23/85-86 dated 18.9.1989 had directed Sri J.Ravi Mohan Reddy, Manager of the Branch to pay Rs.32,132.69 with interest of 12 ½ % p.a. from the date of filing of the arbitration case till the date of realisation along with costs. The Arbitrator, in ARC No. 73/78-79 held that the petitioner herein was not responsible for the deficit amount of Rs.50,125.68 ps. Aggrieved thereby, the 1st respondent Corporation preferred CTA No.1 of 1987 in the Court of the Principal Subordinate Judge, Visakhapatnam and by order dated 18.2.1994, the appeal was dismissed.

Sri K.Raghuveer Reddy, learned counsel for the petitioner would seek to have the order of punishment of removal from service set aside on the following grounds:- 1) Since the award of the Arbitrator under the A.P. Cooperative Societies had fastened liability on the Manager, under whose direct control the petitioner was working, the finding of the Enquiry Officer and the Disciplinary Authority that the petitioner was responsible for misappropriation of the amount is a perverse finding and that the award of the Arbitrator binds the respondent Corporation; (2) Neither the Enquiry Officer nor the Disciplinary Authority are entitled to take a view different than the one taken by the Arbitrator under the A.P.Cooperative

Societies Act and since Sri J.Ravi Mohan Reddy, the Manager, was held liable for misappropriation of the amount, disciplinary action could only be taken against him and not against the petitioner herein; (3) the action of the respondents in passing the impugned order was in violation of the procedure prescribed for conducting disciplinary proceedings.

A perusal of the appellate order passed by the 1st respondent on 11.9.1997 would show that all the contentions raised by the petitioner, in his grounds of appeal, were examined and were rejected by a well considered and detailed order. The appellate authority held that the enquiry report clearly established the responsibility on both the then Manager Sri Ravi Mohan Reddy and the petitioner besides the merchant and it was established that all the three had clandestinely colluded with each other and had played fraud on the respondent Corporation. With regards the report of the Arbitrator in ARC No.73-78/79, the appellate authority, while noting that though the award was passed against the then Manager and the petitioner herein was discharged from making good the amount, the petitioner was none the less liable for disciplinary action, for his collusion with the Manager and the merchant to cheat the corporation for his personal gain and that action was liable to be taken against him for administrative irregularities. While the appellate authority noted that in the enquiry it was found that the petitioner had acknowledged receipt of stocks delivered by the dealer even without receiving the stocks and had falsely certified the bills, the petitioner would contend that he had little choice but to act at the dictates of the then manager. The appellate authority held that any such illegality ought to have been brought to the notice of

higher authorities. While the charges levelled against Sri J.Ravi Mohan Reddy, the then Manager are no doubt serious, the charges held established against the petitioner of having certified the bills in token of having received the stocks, without, in fact actually receiving such stocks amounts to playing fraud on the Corporation.

Disciplinary proceedings, under the relevant service regulations of the Corporation stand on a different footing and are distinct from proceedings initiated for recovery of the amounts due under the provisions of the A.P.Cooperative Societies Act. While the former is to take disciplinary action for proved acts of mis-conduct, the latter is for recovery of the pecuniary loss caused to the Corporation. The mere fact that the petitioner was absolved of the liability to repay the amount, by virtue of the award of the Arbitrator, does not necessitate disciplinary action against him being dropped. The award of the Arbitrator can, at best, constitute a factor to be taken into consideration by the competent authority. The appellate authority has taken note of the award of the Arbitrator and has held that merely because the petitioner was discharged from responsibility of making good the amount, he was none the less liable for disciplinary action for colluding with the manager and the merchant to cheat the Corporation for his personal gain and that disciplinary action was taken against him for administrative lapses. The conclusions reached by the appellate authority are in accordance with law and do not necessitate interference.

The charges held established against the petitioner are grave and serious in nature and would reveal that he had, in collusion with the manager and the merchant, played fraud on the respondent Corporation by certifying the bills of the dealer as token of having

received the stocks though stocks had not been received at all. Imposition of punishment of removal from service for such acts of misconduct cannot be said to be disproportionate. Except to contend that the procedure prescribed for conducting a disciplinary enquiry had not been complied with, no particular provision, which is alleged to have been violated has been specifically referred to nor has it been stated as to how the petitioner has been prejudiced thereby.

The petition fails and is accordingly dismissed. No costs.

RAMESH RANGANATHAN, J

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